

REMARKS

Favorable consideration and allowance are requested for claims 1-3 and 7-11 in view of the following remarks.

Status of the Application

Claims 1-3 and 7-11 are pending in this application. Claims 1 and 3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cisco VOIP Call Admission Control, August 2001, pages 1-26 to Odom (the “Odom publication”) in view of U.S. Patent 6,914,900 B1 to Komatsu *et al.* (the “Komatsu patent”). Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Odom publication in view of Cisco Field Manual: Router Configuration, Cisco Press, 14 December 2001, Chapter 12-2, pages 18-19 to Hucaby *et al.* (the “Hucaby publication”). Claims 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Odom publication and Komatsu patent as applied to claim 3 and further in view of Hucaby publication. Claims 4 and 5 were previously cancelled. Claim 6 has been cancelled. Claims 1-3 have been amended. Claims 7-11 have been added.

Rejections under 35 U.S.C. § 103(a)

According to the Office Action, the combination of the Odom publication and the Komatsu patent renders claims 1 and 3 obvious. In response, Applicants respectfully submit that this rejection is moot in light of the amendments to these claims. In particular, neither the Odom publication nor the Komatsu patent discloses or suggests any decision-making process with respect to whether

to send a probe to assess network conditions. For at least this reason, Applicants assert that claims 1 and 3 are in condition for allowance. Further, as each of new claims 7-11 has one of claims 1 and 3 as its base claim, these claims are also allowable.

The Office Action further stated that the combination of the Odom and Hucaby publications renders claim 2 obvious. Applicants respectfully submit that this rejection is also moot in light of the amendments to this claim. In particular, neither the Odom publication nor the Hucaby publication discloses or suggests a burst of trial data being sent and received by a telephone. Further, as the probes described in the Odom publication are sent periodically for the purpose of updating cached historical data, it would be counter-intuitive to put the capability in the telephones. For at least these reasons, Applicants assert that claim 2 is in condition for allowance.

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If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 038665.56183US).

Respectfully submitted,

Date: May 4, 2009

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